LAW122- Business Law Midterm Study Guide

Bussiness Law (Ryerson University)

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Lecture 1: Nature and Sources of Law

What is Law?

- Principles and rules
- [illegible]s made legitimately that a court will enforce
  - All of the rules that determine how we make the rules and enforce them
- Law is [illegible] social practice
- Reasoning [illegible]ers: not just who won a case, but why they won it
  - Applica[illegible]f law to facts
- Law is not always [illegible]
  - Do you have a [illegible] obligation to save a drowning person?
  - Should you?

Risk Management Process

1) Identification: recognize legal risks
   a) Can we be held liable for this?
2) Evaluation: assessment of legal risks
   a) What are the chances of something g[illegible]g?
   b) What does it cost us if it does?
3) Response: reaction to legal risks
   a) What are we going to do about i[illegible]

Risk Management Strategies

Form	Description	Example
Risk Avoidance	Eliminate risk	Withdraw dangerous product from market
Risk Reduction	Minimiz[illegible]	Modify product to reduce danger
Risk Shifting	M[illegible]k someone else's [illegible]m	Buy liability insurance for losses caused by danger
Risk Acceptance	Live with the risk	Do nothing

Legal Tr[illegible]ons

- [illegible]vil law jurisdictions:
  - Originated in ancient Rome
  - E.g., France and most of Europe, Quebec
- Common law jurisdictions:
  - Originated in England
  - E.g., England, Australia, New Zealand, most of Canada, United States
  - Judge-made laws (dispute-based)

Private & Public Law

- Public Law
  - Our life in the public square: governs our relationship with the government and with society as a whole
  - e.g// constitutional law, tax, criminal law
- Private Law
  - Our private lives: governs matters of private concern and the relationships we have with other private individuals/corporations

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- e.g// tort, contract law, property law

Criminal vs Tort

Amanda punches Zoe at a party in response to a perceived insult. Zoe has to go to the hospital for a concussion. There are many witnesses

- Zoe can sue Amanda for battery
- State (Crown) can prosecute for assault even if Zoe doesn't "press charges"

Hierarchy of Sources of Law

- Constitution
  - the highest law of the land
  - Who can make law and which laws are valid
  - Some individual rights
- Legislation
  - Laws created by Parliament or Provincial/Territorial Legislatures
  - Can delegate authority to administrative agencies or municipalities
- Courts
  - Interpretations of Constitution
  - Interpretations of Legislation
  - Common Law (judge-made law)

The Constitution

- Provides basic rules for society, including our legal and political systems
- 1867 and 1982 Acts
- Highest source of law
  - Any law inconsistent with Constitution: no force or effect (s. 52 of the Constitution Act, 1982)
- Difficult to amend
  - Requires consent of both Parliament and Legislatures of two-thirds of all provinces with at least 50% of the population (for anything affecting multiple provinces)

The Constitutional Division of Powers

Federal and Provincial

- Can only act within their powers, or law is *ultra vires* and unconstitutional
- 10 Provinces; 3 Territories somewhat different, but we can treat them effectively as provinces

Federal Powers

- *Peace, Order, and Good Government*
- Regulation of Trade and Commerce
- Income Tax
- Postal Service
- Census and Statistics
- Military
- Navigation and Shipping
- Currencies and Coinage
- Interest
- Banking & Bankruptcy
- Copyright & Patents
- Indians and Lands Reserved for Indians
- Naturalization and Aliens
- Criminal Law
- Marriage and divorce

Provincial Powers

- Direct taxation within the province
- Borrowing of money for the province
- Provincial Public lands
- Municipal institutions
- Hospitals (and healthcare)
- Charities
- Business licenses
- Local Works and Undertakings in the province
- Incorporation for provincial companies
- Solemnization of marriage
- Property and civil rights in the province
- Administration of Justice in the province
- All matters of a merely local or private nature

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Problem: Powers distributed in 1867

- What about things like telecommunications and air travel?

The Residual Power

- The federal government has authority over everything that is not specifically mentioned

Problem: Overlapping Jurisdictions

- The federal government has exclusive power over trade and commerce, but provinces have power over property in the province and matters of local nature
- Parliament can restrict interprovincial or international trade, but not within the province

Federal law usually paramount where conflicting laws

The Charter of Rights and Freedoms

- The Charter of Rights and Freedoms
- Rights and freedoms commonly affecting business:
    - Fundamental freedoms (e.g. freedom of religion, freedom of expression)
    - Mobility Rights
    - Equality Rights (prohibited grounds of discrimination include race, sex and religion, but not poverty
- Section 52: Constitution as supreme law
    - Law inconsistent with Charter is "of no force or effect"

Limitations on Charter Rights

- Charter only applies to government action
- Charter does not apply against corporations
    - It may only apply in favour of private business
    - Some provisions extend to "everyone"
    - Section 2(b): "everyone": freedom of expression
    - Charter provisions only protect "individuals"
    - Section 15: equality right
- Thus corporations have right to freedom of expression but not equality rights
- Charter rights subject to "reasonable limits"
    - Section 1 balances individual rights and community interests
    - Basically proportionality: does the benefit of the law outweigh its negative effects, and are the negative effects minimized?
- Charter subject to "notwithstanding clause" in section 33
    - Government can override some rights and freedoms
    - Very rarely used

Charter Remedies

- Declaration
- Injunction
- Striking down
- Severance, reading down, reading in
- Damages

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How Can We Challenge the Law?

Indigenous Rights

- Express recognition of treaty rights and Indigenous Rights
- Section 35 of the Constitution Act states:
    - (1) The existing aboriginal and treaty rights of the aboriginal peoples of Canada are hereby recognized and affirmed.
    - (2) In this Act, “aboriginal peoples of Canada” includes the Indian, Inuit and Métis peoples of Canada.
    - (3) For greater certainty, subsection (1) “treaty rights” includes rights that now exist by way of land claims agreements or may be so acquired.
    - (4) Notwithstanding any other provision of this Act, the aboriginal and treaty rights referred to in subsection (1) are guaranteed equally to male and female persons.

Indigenous Rights & Treaty Rights

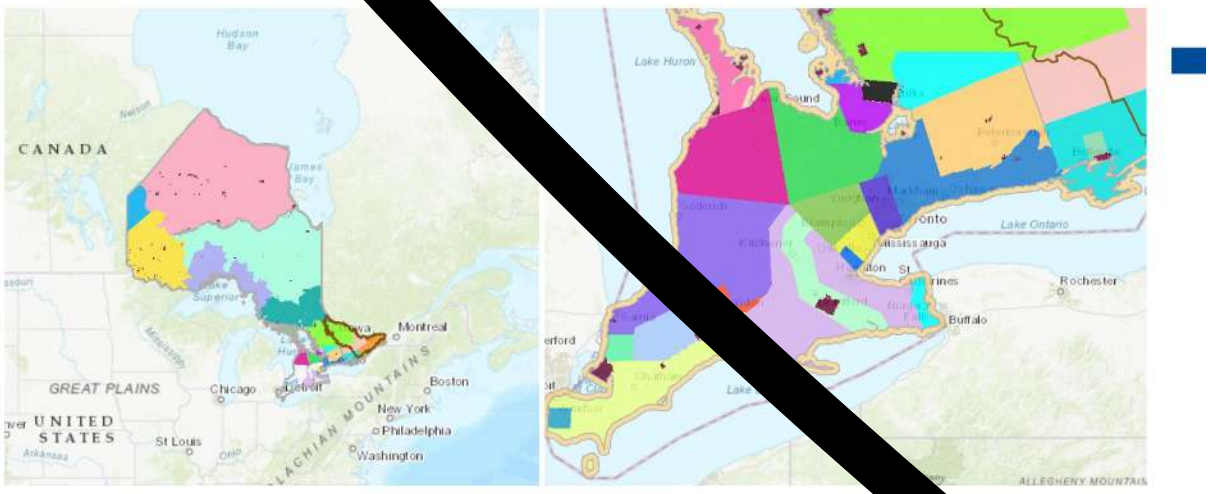
- Treaty Rights
    - Outlined in the treaty document, an agreement between the Crown and Aboriginal groups
    - As per section 35(2), Aboriginal, Inuit, and Metis peoples of Canada
    - Treaties may be written or oral

Who is the Crown?

- Imperial Crown
- Federal Crown
- Provincial Crown

Land Treaties

Many of [illegible] improperly made by Crown and contested



Land Treaties in Ontario

Land Treaties in Sou[illegible]Ontario

TRC

Indigenous Rights

- Collective rights held by Indigenous Peoples that reflect original occupation and [illegible]f land
- Vary from group to group and place to place
- Include rights to self-government, occupation of land, resource exploitation, culture and [illegible]ms.
- Don’t need to depend on specific land rights, but on historical use and practice
- Example: fishing rights, even where fishing otherwise prohibited

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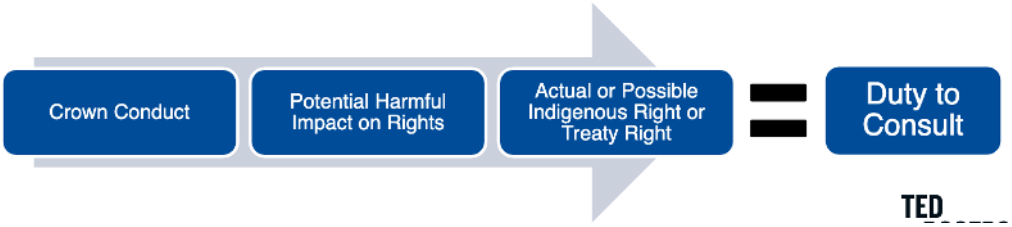
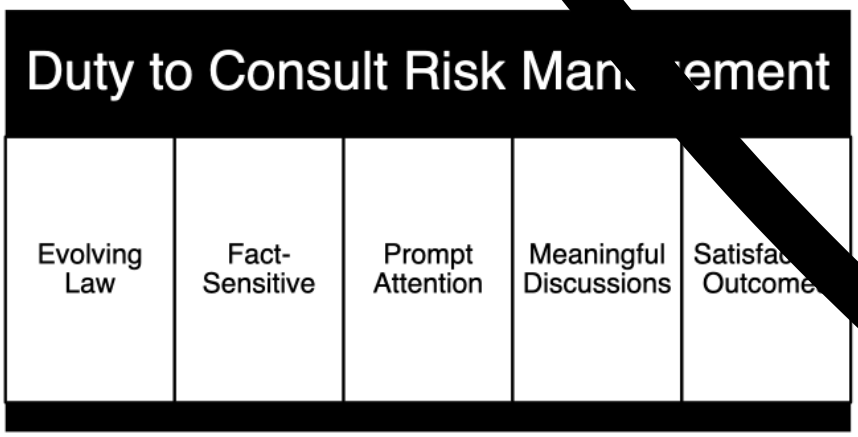
Duty to Consult



- Fiduciary duty imposed on the Crown
- Requires consultation with Indigenous Groups when Crown has knowledge or should know, that its conduct might adversely affect either a recognized or potential Treaty Right or Indigenous Right.
- Not imposed directly on businesses, but many business projects require Crown approval
  - Logging
  - Mining
  - Real estate development
  - Pipeline
- This often triggers duty to consult
  - May be delegated by Crown to the relevant businesses
  - e.g. a logging company may have to consult with local Indigenous groups and either reach an agreement or come up with a plan to accommodate Indigenous interests in order to receive government approval
- Duty to Consult Spectrum based on:
  - Strength of Claim
  - Degree of Impact
- Low impact/claim may only require notification
- High impact/high claim involves deep consultation and may require accommodation
  - For example, revenue sharing
- Indigenous groups do not hold a veto, but the Crown is still a fiduciary



Legislation and Delegated Authority

- Federal Parliament or Provincial Legislatures
  - Bills become proposed that if passed become acts
  - Can delegate authority to other entities, such as municipalities and administrative agencies

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- These can then pass new laws within their delegated authority, such as by-laws and regulations

Common

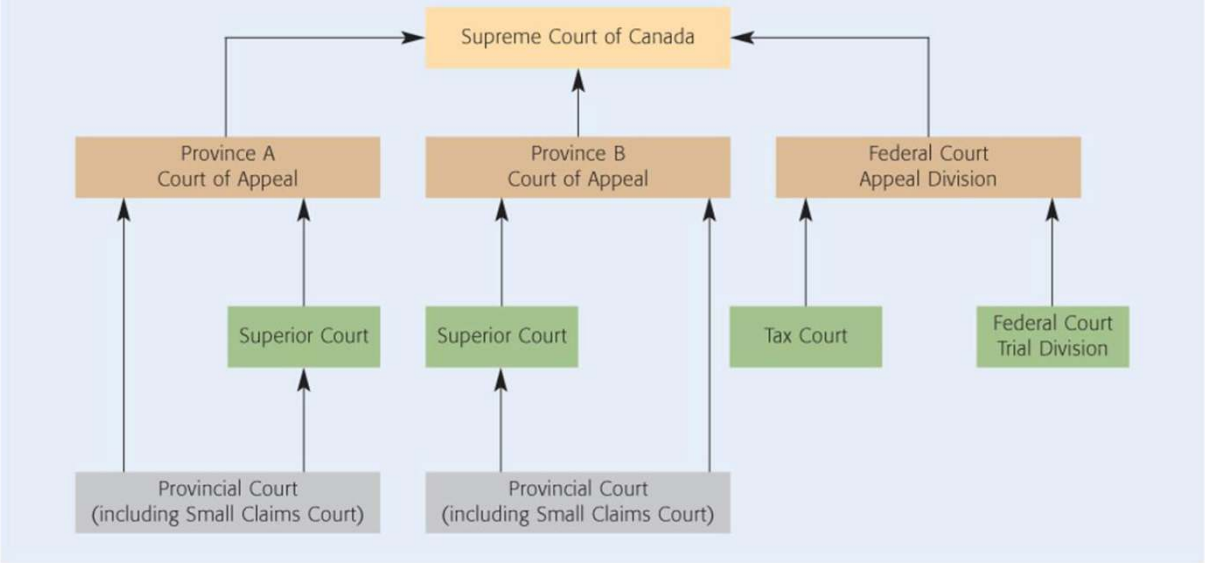
- Law m by judges
- Many are law have few relevant statutes
- Law of contra largely judge-made, not governed by a written Act
- Courts have slowly eloped the law of contract over hundreds of yea ginning with English courts
- To find the law of contra primary source is case law: the sions of judges in specific cases
- We will see how this functions as ok at torts and ct throughout the course

Precedent

- Stare Decisis
  - Judges must follow similar pr s decisions f urts higher in same hierarchy: "Like cases must be decided ali
  - Other court decisions m e persuasive but not binding
- Common law vs Equity
  - There once were courts of law and courts of equity applying rent rules
  - Courts today are technically both courts of law and equity
  - The differe les have effectively been folded into each other
  - We don ally need to worry about this

Canada's Cou stem

FIGUR The Court Hierarchy


Supreme Court of Canada
Province A Court of Appeal
Province B Court of Appeal
Federal Court Appeal Division
Superior Court
Superior Court
Tax Court
Federal Court Trial Division
Provincial Court (including Small Claims Court)
Provincial Court (including Small Claims Court)

You are member of Court of Queen's Bench in Alberta deciding on a liability Issue

- Alberta Court of Appeal
  - No Precedents

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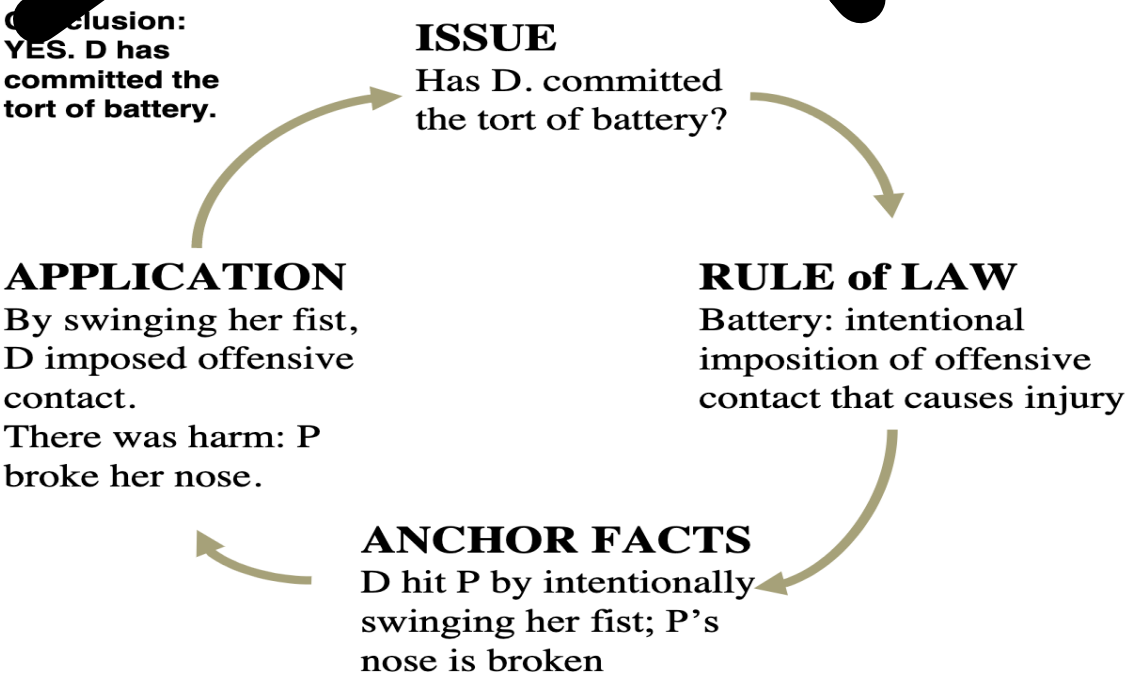
- Supreme Court of Canada
    - No Precedents
- Superior Court of BC and Saskatchewan Court of Appeal
    - Liability

Superior Court in Quebec and Ontario Court of Appeal

- Liability

Solving a Legal Problem

1) Start with the facts
    a) Read carefully and understand the facts as they determine the relevance of any legal points to make later
2) Identify the relevant legal issues:
    a) What are the parties fighting about? What needs to be resolved? e.g. is the contract enforceable? Has A committed a tort against B?
    b) The order of issues matters, e.g. was there an offer? Was there an acceptance?
    c) Deal with one issue at a time
3) Identify the rule of law relevant to the issue
    a) Is there a legal principle or test relevant? State it in the abstract without referring to the facts yet
    b) Cite supporting authorities
4) Apply the law to the facts
    a) Identify the anchor fact = a fact given that links the law to the fact pattern.
    b) Application = law + anchor facts
    "Drives to your conclusion, which resolves the issue"


Conclusion:
YES. D has committed the tort of battery.
ISSUE
Has D. committed the tort of battery?
RULE of LAW
Battery: intentional imposition of offensive contact that causes injury
ANCHOR FACTS
D hit P by intentionally swinging her fist; P's nose is broken
APPLICATION
By swinging her fist, D imposed offensive contact.
There was harm: P broke her nose.

- Sometimes many issues
- For example, negligence requires 5 elements be addressed:
    - Duty of Care

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    - Breach of the Standard of Care
    - Cause in Fact
    - Cause in Law
    - Legally-Recognized Harm
- So if you have to determine negligence, you will have to think about each part as a separate issue, then combine them

Overview

- Understanding law is necessary to risk management in business
- Canada is a common law country where much law is judge-made
- Private law governs relations between people, public law between people and government or society
- Risk management strategies include risk avoidance, risk reduction, risk shifting, risk acceptance
- The Constitution is the highest source of law in Canada
- Legislative powers are divided between the Federal Parliament and the Legislatures of the provinces
- Courts interpret and apply the Constitution and legislation, and also create the common law
- The Charter of Rights and Freedoms sets out rights that both individuals and corporations have against government intrusion
    - Freedom of expression, freedom of religion, equality
- These rights are not absolute, but can be limited by government where it is reasonably justified in a democratic society
- Where Charter rights are violated, a court can craft a variety of remedies, including damages, striking down, reading in, a declaration or injunction
- The Indigenous peoples of Canada have Treaty Rights and Indigenous rights
- Whenever the Crown might injure a recognized or potential right, there is a duty to consult, depending on likelihood and severity of adverse effect
- Stare decisis: Courts in Canada must follow the precedents set by higher courts (and they typically follow their own)
    - These decisions are “binding”
    - This is how common law develops
    - Treat like cases alike
- Other precedents can be persuasive, but are not binding
- Often 4 levels of court: Provincial, Superior, Appeal, Supreme Court of Canada
- To solve a legal issue, start with the facts, identify the issue, identify the relevant legal rules or principles, then apply them to the relevant facts

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LECTURE 2: INTRODUCTION TO TORTS

Tort
- Tort is a failure to fulfill a private obligation imposed by law
- Tort law includes almost every sort of private law wrong outside of breach of contract
- Social purpose: Tort law discourages people from committing private wrongs by requiring them to compensate & restore the wronged party
- Tortfeasor (defendant) is a person who commits a tort

Criminal vs Tort
Tort= Private wrong
- Breach of obligation to person
- Claim by individual plaintiff
- Usual remedy of compensatory damages

Crime= public wrong
- Breach of obligation to society
- Prosecuted by Crown
- Usual remedy of punishment

Tort vs Contract
- Breach of contract is another kind of private wrong
- However, not a tort
- Main difference is that contract concerns obligations you have agreed to yourself
- Tort concerns obligations that exist regardless of your agreement or consent to them
- Different remedies and risks: we will discuss these when we talk about contract

Tort Remedies
Compensatory Damages (most common)
- Limited by:
  - Remoteness
  - Mitigation
- Punitive damages (outrageous or reprehensible wrong)
- Nominal Damages
- Injunction

Kinds of Torts
- Intentional Torts
  - Requires an action and an intention
    - The required intention is not necessarily to cause the result, but often just to do the thing that leads to the result
  - Examples:
    - Battery
    - Deceit
    - Trespass to land
    - False imprisonment
    - Intimidation
- Negligence
  - Acting carelessly where your actions, or failure to act, creates a foreseeable risk to someone else
  - Includes professional negligence and product liability
- Strict Liability
  - Doesn't matter if you intended to act or were careless
  - Liability simply follows from the harm occurring
  - Applies to very risky activities, often involving owned animals

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- So if your pet tarantula bites someone or if your cattle wanders off your property and tramples your neighbour's yard, you are strictly liable.

Case Brief 3.1: Cowles v Balac

A photo of a tiger jumping through a car window with two people seated in the car

- 2 people mauled by a tiger at African Lion Safari
- Judge held that there was negligence, but also African Lion Safari would be strictly liable anyway
- Created high risks, doesn't matter if any negligence
- How could ALS manage the risks here?

Case 3 fr[illegible] Chapter 3: Rochard and Sid

- Roch[illegible]owns and operates a drug store. Because business is often slow during the day, and [illegible] because [illegible] worries about robberies, Rochard regularly brings his dog, Sid, to work with hi[illegible]
- Sid has pr[illegible]d good companionship and his aggressive nature has discouraged teen[illegible]s from hanging arou[illegible]e store. At the same time, Sid had occasionally frightened custo[illegible]and on a couple of occas[illegible]he has tried to bite small children.
- Recently Sid did, in[illegible] attack and severely injure Sarah, a young girl who wa[illegible]iting the store with her father.
- Rochard (apparently) too[illegible]ery reasonable step to prevent the inciden[illegible]

Intentional Torts: Trespass to Land

- Trespass = The Defendant improper[illegible]erferes with Plaintif[illegible]and
- Elements
  - Intention (but low test: intention to [illegible])
  - Land (above, on, or below)
  - Improper
    - No consent, no authority
- e.g//
  - Russo v Ontario Jockey Club (198[illegible]nt HCJ)
  - Russo, the plaintiff, was a very [illegible]ed bettor and ha[illegible]n a lot of money at horse racing tracks owned by the defend[illegible]he Ontario Jockey Cl[illegible]
  - So, the defendant served h[illegible]with a notice while she was [illegible]oodbine Racetrack in Toronto that required h[illegible]o leave the premises.
  - The notice also said[illegible]if she returned to any of the defenda[illegible]premises, she would be charged as a tresp[illegible]er. Russo sued.
- Steps to solving a legal [illegible]blem:
  - Start with th[illegible]ts
  - Identify th[illegible]ue(s)
  - Find th[illegible]e of law that applies
  - Appl[illegible] rule to the facts

REVIEW:

1) INTENT[illegible] - Intention to act; to do the thing that causes the trespass
2) INVO[illegible]S SOMEONE'S LAND - above, on, or below
3) INT[illegible]ERENCE - Goes on, over, or under property; builds, places, or puts something on, under, over t[illegible]roperty.
4) [illegible]PROPER - consent? Legal authority?

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Trespass to Land Remedies

- Damages
  - Compensatory, nominal, or punitive
- Injunction
  - Preventing ongoing trespass
  - Requirement to remove trespassing structure
- Removal of trespassers:
  - Arrest of trespassers
  - Use of reasonable force in arrest

Deceit (also "civil fraud")

- Occurs when a Defendant makes a false statement that the Defendant knows is false/untrue and with which the Defendant intends to mislead the Plaintiff and which causes the Plaintiff to suffer a loss as a result of having reasonably relied on the false statement.
- ELEMENTS:
  - A. Defendant made false statement
  - B. Defendant knew the statement was false (when s/he made it) was reckless in determining truth
  - C. Defendant intended to mislead the plaintiff
  - D. Plaintiff reasonably relied upon Defendant's statement
  - E. Plaintiff suffered a loss

DECEIT: (A) False Statement

- A. The requirement of a false statement can be satisfied in three main ways:
  - Positively untrue
  - Half truth: e.g., providing figures representing profits but omitting to specify that they represent 'gross' profits and thereby conveying the misleading message that they reflect 'net' profits
  - Failing to update information: e.g., the information provided before the deal closes becomes inaccurate because of dramatic changes in the market
- Caveat Emptor (Buyer Beware)
  - Usually, you are under no obligation to tell a purchaser anything even if they are obviously mistaken
  - Exceptions in some cases
    - Seller must disclose hidden defects in real estate transactions
    - Buyers of insurance policies must disclose important information about risk profile

DECEIT: (B) Knowledge and (C) Intention to Mislead

The tort of deceit requires both:

- (B)Knowledge:
  - The defendant must know that the statement is false
  - Careless is not enough (although it may amount to negligence).
- (C) Intention to Mislead:
  - The court must be satisfied that the defendant intended to deceive the plaintiff

DECEIT: (D) Loss and (E) Reasonable Reliance

- D. The plaintiff must suffer a loss as a result of reasonably relying upon the defendant's false statement.
- E. Reasonable reliance: when the false statement refers to past or present fact. The plaintiff must prove a false statement of past/existing fact.
  - No reasonable reliance: if the defendant offered an opinion, predicted the future, or made a boastful

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- statement (“puff”). No liability for inaccurate prediction
- of the future.
- Possible that a statement about the future could imply a present statement of fact: “Our products will have ongoing support” when business is about to shut down

Deceit: PUFFS VS FACTS

1) “This car will make you irresistible!”
2) “This car has a leather interior.”
3) “This car is fit for the gods.”
4) “This car was voted #1 by Car Dealers Association in 2011.”
5) “This car was designed by the best engineers in the world.”

Deceit Remedy: Compensatory Damage

- The Plaintiff is entitled to be p[illegible]to the position th[illegible]ere in before the defendant lied
  - NOT the position the[illegible]ould have been in[illegible]e defendant’s statement had been true
- e.g// I falsely tell you that t[illegible]ainting you are[illegible]t to buy in a gallery is an original Matisse. You buy it for $10,000. If it was original, [illegible]ould be worth[illegible]000. As a non-Matisse, it is worth about $1000. I owe you $9,000, not $90,000

Vicarious Liability Scope

- No vicarious liability fo[illegible]endent contractor
  - Sometimes pre[illegible]le for a business to have work performed by an independent contractor (example of[illegible]ifting”)
  - Employee[illegible]pendent contractor: difficult distinction
- Vicarious liabili[illegible] sc[illegible] employee torts
  - Empl[illegible]-auth[illegible]ed acts
  - Act[illegible]sely co[illegible]cted to employer-authorized acts
  - i[illegible]ne in the[illegible]urse of employment

Effects of V[illegible]ous Liability

- Vic[illegible]n can sue both em[illegible]yee and employer
  - Employee direc[illegible]iable for own tort
  - Employer vicari[illegible]y liable for employee’s tort
  - Employer also d[illegible]ly liable if it committed separate independent tort
  - e.g. careless train[illegible]of a careless employee or failure to properly screen candidates for a position
- Employee generally liable[illegible]mployer
  - But employer’s righ[illegible]dom enforced

Vicarious Liability: General Approach

- General approach to legal matte[illegible]
  - What is the legal issue?
  - What is the legal test?
  - Apply to these facts
- For vicarious liability, the legal test is:
  - Is this an employee?
  - If so, did the employer authorize the employee to do a[illegible]connected act?

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LECTURE 3: TORTS DEFENCES & NUISANCE

Defamation
- Protects reputation
- Defendant makes a false statement to a third party that could lead a reasonable person to have a lower opinion of the plaintiff
- Plaintiff must be a "person," which includes both individuals and corporations
- Does not apply to the dead; you can say whatever you want about them
- Often known as "libel" or "slander," but Canadian law generally does not distinguish

Defamation Elements
- False statement
    - There is no defamation in true statements
- Injuries to Reputation
    - Must be able to identify the person from the statement
    - The statement must be such that a reasonable person would take it as diminishing the reputation of the plaintiff
- Published
    - Must be made to a third party (i.e. not the plaintiff)
    - Hyperlinking or referring to a defamatory statement is not making it yourself

Defamation examples:
- Which are potentially defamatory?
    - "Company X regularly defrauds its customers." (DEFAMATORY)
    - "Alice believes in UFOs."
    - "Mr. Y supports a terrorist organization." (DEFAMATORY)
        - Can lower one's reputation
    - "I ate at Joe's restaurant and got food poisoning."
    - "All dentists are sadists." (NOT DEFAMATORY)
        - Defames a profession
        - No individual is harmed
    - "Nura has cancer."

Defamation Defences
- Justification
    - If you can prove it's true - the onus is on the defendant to prove
    - Honest belief is insufficient
- Privilege
    - If there is a reason we want people to speak freely
    - Two kinds: qualified privilege and absolute privilege
- Fair comment
    - Encourages useful debate on significant issues

Defamation Defences: JUSTIFICATION
- Occurs if the defendant's statement is TRUE
- The defendant has the BURDEN OF PROOF
- The judge will assume that the uncomplimentary comment was false. The defendant must prove that the uncomplimentary statement was true

Defamation Defences: PRIVILEGE
- Absolute privilege
    - Complete immunity from liability even if malicious
    - Only for certain contexts:

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        - Parliamentary proceedings
        - High government official dealing with government business
        - Judges, lawyers, litigants, and witnesses in legal proceedings
        - Between Spouses
- Qualified privilege
    - Wherever there is a legal or moral obligation to make a statement to someone with a duty to receive it
    - E.g. a store owner warning employees about a potential thief
    - E.g. providing an honest reference for employment
    - E.g. responsible journalism about a matter in the public interest
    - Defeated by malice or bad faith

Defamation Defences: FAIR COMMENT

1) Opinion must be informed and supported by facts
2) Opinion must relate to issue of public interest
3) Defence applies if the opinion in question could honestly be held by some person – even if the defendant is prejudiced or opinionated.
4) Cannot be malicious

EXAMPLES:

- "The mayor wants cyclists to die" (probably not a fair comment alone)
- "The mayor's policy of getting rid of bike lanes make it clear he has no respect for the lives of cyclists." (probably fair)

Defamation VS Deceit

- Deceit is a lie or misleading statement made directly to the plaintiff (person harmed) that is relied upon
- Defamation is a falsehood that diminishes the plaintiff's reputation made to one or more third parties

Defamation Vicarious Liability

- Risk Management
    - A business can be held liable for the defamatory comments of an employee, especially where using company equipment
    - Not fully clear when an action by an employee will be considered in the course of employment for this tort

Defences to Intentional Tort

- Full defences
    - Consent
        - Plaintiff consented to interference with his/her body, property, or land.
        - Consent must be voluntary and informed. It can be withdrawn or limited.
        - There is implied consent in limited cases, e.g., implied consent to receive life-saving assistance unless evidence to the contrary (DNR orders).
    - Legal authority
    - Self-defence, defence of property
        - Right to protect oneself from actual and threatened violence
        - Elements
            - Defence to torts of assault and battery
            - Available only if person at immediate risk
            - Limit on defence - Cannot use more force than necessary in circumstances
            - Also allowed to defend third party
            - e.g. parent protecting child
        - Force used to respond to threat must be proportionate and reasonable.

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        - Self-defence and defence of third party are broadly defined because they protect human life and well- being. There is more room for the use of force, even lethal force.
        - But the defence of property is less generous.
            - If only threat is to land and chattels, may never be reasonable to deliberately cause death or serious injury
    - Necessity
        - Defendant's actions are justified by an emergency
        - Elements
            - Immediate action must be required to avoid calamity
            - Benefits flowing from conduct weighed against harm
            - e.g. doctor giving urgent medical care to unconscious patient
            - e.g. tearing down house to prevent spread of fire
            - Usually a complete defence but sometimes only partial defence
- Partial defences
    - Provocation
    - Contributory negligence

Nuisance

- Definition:
    - Occurs when the defendant unreasonably interferes with the plaintiff's use and enjoyment of their own land
- The legal test:
    - Whether the interference caused by the defendant is unreasonable or not.
- Types of nuisance could be emissions of some sort:
    - Odours
    - Chemicals
    - Noise
    - Vibrations
- Can also be non-intrusive:
    - Draining water from plaintiff's land
    - Causing subsidence
    - Opening a business that brings crime/drug use
- Things that do not give rise to nuisance:
    - Lowering property values by doing something legal on own land
    - Blocking sight lines/views or sunlight
- Factors to consider when assessing "unreasonableness"
    - Type of nuisance
    - Nature of the neighbourhood
    - Time and day of the interference
    - Intensity and duration
    - Social utility of interference
    - Defendant's motivation
- Defence if acting under statutory authority
    - The defendant caused nuisance while acting under legislation
    - But only if the defendant's nuisance was an inevitable result of compliance with the statute.
- No "but we were here first" defence
    - As land use in neighbourhood changes, old uses may become nuisances
    - A factory that emits terrible odours may become a nuisance once people move nearby
- REMEDIES
    - Damages for loss of value to property
    - Injunction (to stop the interference), but only under certain circumstances. Overall social good must be considered.

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Nuisance Case: Helga's Party

- Each year, Helga hosts a party in June to celebrate her Scandinavian heritage. The party involves a BBQ, singing Norse "viking" songs, fun games, and general merriment. Helga invites everyone in her neighbourhood, and almost everyone loves to come.
- Her next-door neighbour, Austin, however, never comes. Austin hates this celebration. He does not like all of the singing, particularly because he is very sensitive to noise. He also hates the smell of the BBQ since Helga prepares some very pungent Norse meats to serve her guests. Austin also feels that since he was in the neighbourhood first, Helga has no right to do things that he hates.
- Austin has decided that this year, he will get an injunction to prevent Helga from hosting her annual Viking heritage party.
- Austin will probably be successful because:
    - Austin finds that the party interferes with his use and enjoyment of land and therefore Helga is committing the tort of nuisance.
    - Austin was in the neighbourhood first, so his use and enjoyment of the land trumps Helga's use and enjoyment.
    - Sensory interferences with the use and enjoyment of land like noise and smells are considered very serious forms of nuisance and particularly deserving of a remedy.
- All of (A), (B), and (C) are correct.
- Actually, Austin does not have a strong case, and he will likely lose if he does sue Helga for nuisance.

The Rule in Rylands v Fletcher (1868) LR 3 HL 330

- Defintion
    - The Defendant can be held strictly liable for a non-natural use of land if something escapes from the property and injures the Plaintiff
- Legal test
    - Non-natural land use created special and unusual danger
    - Escape from defendant's land
    - Loss or injury to plaintiff

The Rule in Rylands v Fletcher

- Strict liability
    - No need to show intent or carelessness
- Non-natural use
    - Must create a special and unusual danger
- Escape
    - Something must escape from defendant's land
    - e.g// water from a reservoir, fireworks, explosives, chemicals etc

Defences to the The Rule in Rylands v Fletcher

- Consent
    - If can show plaintiff somehow agreed to the danger
- Cause is third-party or natural force
    - E.g. a trespasser ignited your firework stockpile, or an earthquake caused your reservoir to break and overflow onto neighbouring property
- Statutory authorization
    - Event was an inevitable result of complying with statute

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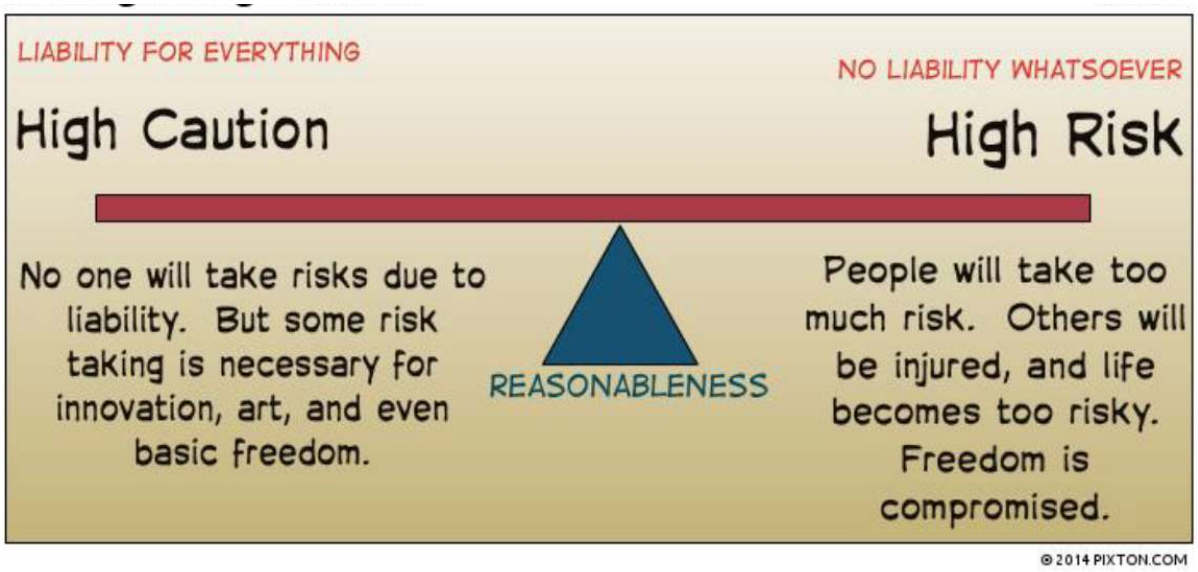
LECTURE 4: TORT OF NEGLIGENCE

Negligence

- Definition:
  - The careless causing of harm
- Rationale
  - To compensate for harmful, risky actions conducted carelessly but to also allow for careful risk-taking
- Negligence is about risk management and allocation
  - Who should bear the risk of an activity?
  - What risks are acceptable?
- Negligence law generally says: the person in the best position to mitigate or avoid the risk is liable for unreasonable risks
- The risk of a car exploding due to defects is placed on the manufacturer, not the driver, because the manufacturer has more information and ability to avoid that risk
- The risk that the driver hits a person due to poor driving is on the driver, because they are in the position to avoid it
- Risk of something going wrong in surgery is on the surgeon, but surgery is inherently risky, so even if something goes wrong, surgeon might not be liable if did everything right

Negligence: Striking the Balance


LIABILITY FOR EVERYTHING
NO LIABILITY WHATSOEVER
High Caution
High Risk
No one will take risks due to liability. But some risk taking is necessary for innovation, art, and even basic freedom.
REASONABLENESS
People will take too much risk. Others will be injured, and life becomes too risky. Freedom is compromised.
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Negligence: Legal Test

- **Duty of care**
  - A duty of care exists when the defendant is required
  - to use reasonable care to avoid injuring the plaintiff
  - About who might be liable to whom
  - How to recognize situations where the defendant owes a duty of care to the plaintiff?
  - Established Cases
    - i) If courts have already established in a previous case that a category of relationship is subject to a duty of care, simply follow precedent and assume that, yes, there will be a duty of care in future cases in the same category.
    - ii) Examples of well-established duties of care:
      - (1) Doctor-patient
      - (2) Lawyer–client
      - (3) Manufacturer of goods – user of goods

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- If No Established Cases
    - i) 3 questions:
        - (1) Was it reasonably foreseeable that the plaintiff (the victim) could be injured by the defendant (the tortfeasor)?
        - (2) Was the defendant in a relationship of sufficient proximity to the plaintiff?
        - (3) Are there policy reasons not to impose liability?
- Reasonable Foreseeability
    - i) Objective test:
        - (1) Whether a reasonable person in the defendant's position would have foreseen the risk that harm would occur?
            - (a) e.g. slip and fall on an icy sidewalk in front of the store
        - (2) It is not subjective
            - (a) Opinion of either plaintiff or defendant does not matter
        - (3) Not perfect foresight, average foresight
- Proximity
    - i) Proximity means close and direct
        - (1) Physical
            - (a) Careless driver hits a bridge
        - (2) Social
            - (a) Parent and child
        - (3) Commercial
            - (a) Tavern and drunk driver
            - (b) Manufacturer and consumer
    - ii) Proximity limits the extent of liability
    - iii) Not "liability in an indeterminate amount for an indeterminate time to an indeterminate class" – Cardozo J in Ultramares Corporation v Touche
    - iv) If I injure you, I may be liable to you, but not your employer for loss of income from your absence
    - v) If I damage train tracks, I may be liable to the train company, but probably not to everyone that might take the train for the delay and lost opportunities
- Public Policy
    - i) If the injury was reasonably foreseeable and there was sufficient proximity, liability can be denied by courts on the basis of overriding policy consideration.
    - ii) The court asks what effect would a duty of care have on society and the legal system?
    - iii) Open the floodgates for litigation
        - (1) Negligent statements
    - iv) Interfere with political decisions
        - (1) Professional regulatory bodies (Case Brief 6.3: Cooper v Hobart)
    - v) Hurt a valuable type of relationship
        - (1) Mother and unborn child (Dobson v Dobson)
- Duty of Care for Statements
    - i) Communicated on a serious occasion?
    - ii) Made in response to an inquiry?
    - iii) Defendant was paid for the statement?
    - iv) Statement of fact or statement of opinion?
    - v) Disclaimer?
    - vi) Did the defendant ought to know that the plaintiff, either as an individual or as a member of a group, might rely on the statement?
    - vii) Did the plaintiff rely on the statement for its intended purpose?

- **Standard of care**
    - Defines how much care a person with a duty of care must exercise
        - i) Ask: what would a reasonable person in the position of the defendant have done?
        - ii) Focuses on the defendant's actions or omissions.

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- Reasonable Person Test
  - i) Objective
  - ii) Takes precaution against reasonably foreseeable risk
  - iii) Weighs the severity of the harm and likelihood of its occurrence (probability) against the cost of precaution
  - iv) Considers acting in a way that has great social utility even though it creates risk
  - v) Sudden peril (lower standard in emergencies)
- Standard of Care for Professionals
  - i) Professionals must act as a reasonable professional would under similar circumstances
    - (1) E.g. the reasonable lawyer or the reasonable doctor
  - ii) Standard is higher than a reasonable person in general
    - (1) No allowance for inexperience
    - (2) Standard may be still higher for specialist or expert
  - iii) Hindsight cannot be used: focus on information reasonably available to defendant at the time
  - iv) Errors of judgment are different than carelessness – can be wrong, but not liable if it wasn't careless
  - v) Compliance with approved practice (by professional organization)
- Product Liability
  - i) Product Liability: Harm caused by manufactured products:
    - (1) US (strict liability)
      - (a) Manufacturer liable for any defects
  - ii) Canada (negligence)
    - (1) Manufacturer liable only for careless defects
  - iii) In product liability actions, it is easy to prove a duty of care is owed, so the case usually turns on whether the standard of care was breached
  - iv) Careless manufacture of specific item
    - (1) Liability is likely to be imposed
  - v) Careless design of product line
    - (1) Widespread issue: narrower scope of liability based on balancing
  - vi) Careless failure to warn of the risk of harm
    - (1) Reasonable in circumstances
    - (2) Manufacturer, seller, or installer may be liable
    - (3) "Learned intermediary rule" in appropriate situations

- **Causation of loss**
  - Cause in fact
  - Cause in law
  - harm/loss
  - Who caused the harm?
    - i) The Defendant must be a cause in fact and in the law of the plaintiff's Injury:
      - (1) Factual causation: The "But For" test
      - (2) Legal causation: Remoteness
  - Factual Causation
    - i) Would the plaintiff still have suffered harm, "but for" the defendant?
    - ii) If the defendant had not been careless, would the plaintiff still have suffered the same injury?
    - iii) Determined on a balance of probabilities
      - (1) More than 50% likely caused the problem
      - (2) i.e. More likely than not
      - (3) Still liable for the full amount, though, even if only a 51% chance the defendant caused the injury

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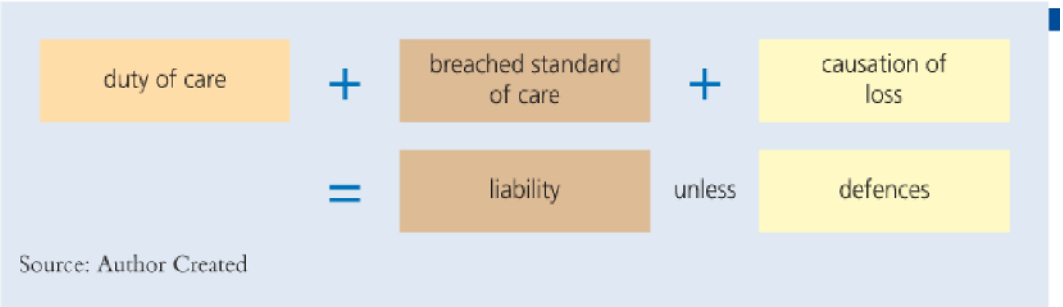
- Cause in Law ("Remoteness")
  - i) Even if the harm would not have occurred but for the actions of the defendant, the defendant may still not be liable if the damage was too remote
  - ii) The kind of harm must be reasonably foreseeable
    - (1) Not the exact mechanism of action
- Causation and Remoteness for Intervening Acts
  - i) Remoteness is also used to deal with intervening acts.
  - ii) Intervening Act: an event that occurs after the defendant's carelessness and that causes the plaintiff to suffer an additional injury.
  - iii) Example: I broke your leg. You suffer further injury,
    - (1) because you fell down the stairs while walking on crutches, or
    - (2) You are hit by lightning in your physician's parking lot
- Causation and Remoteness: Thin Skull
  - i) Thin Skull rule: applies when the plaintiff was unusually vulnerable to injury
    - (1) If a normal person would not have suffered any harm then the defendant is not liable
    - (2) If the defendant's carelessness would have caused an ordinary person to suffer some loss, the plaintiff's actual harm is fully compensable.

- Need all 3 for negligence
- May be defences available

FIGURE 6.1 The Cause of Action in Negligence



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Defences to Negligence

- Contributory negligence:
  - Plaintiff acts carelessly (apportionment)
- Voluntary assumption of risk:
  - Plaintiff freely agrees to accept the risk (not liable)
- Illegality:
  - Plaintiff participates in an illegal act (not liable)

Contributory Negligence

- Definition:
  - It occurs when the plaintiff is partially responsible for an injury that defendant tortiously caused
  - The plaintiffs own careless was a cause or added to the injury he or she suffered
  - The damages are reduced to reflect the plaintiff's contribution to harm
- Test: Apply the same tort analysis, focusing on the plaintiff's actions:
  - Did the plaintiff breach the standard of care?
  - Was the plaintiff's carelessness a cause of the plaintiff's loss?

Contributory Negligence: Impact on Liability

- The Judge will apportion liability
  - I.e., will decide what percentage of the loss should fall on the plaintiff
- The plaintiff's damages will be reduced accordingly

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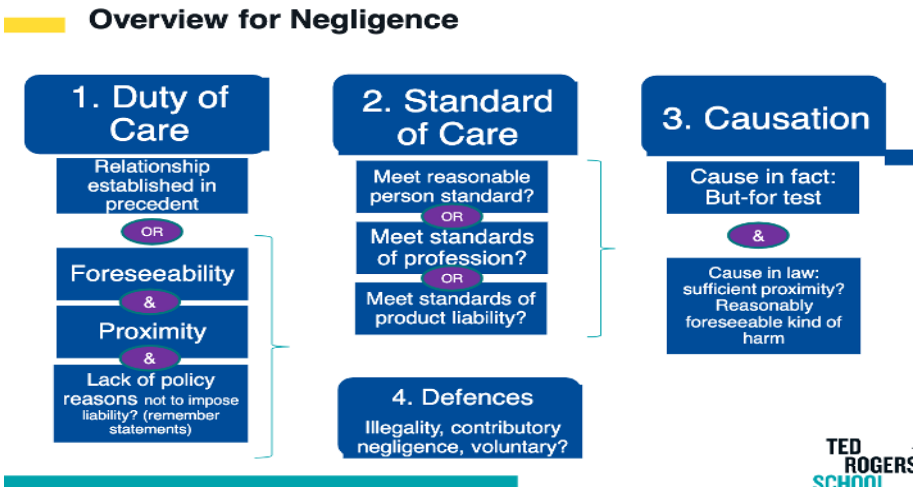
- To reflect the plaintiff's own contribution to his/her injury

Voluntary Assumption of Risk

- Definition: Plaintiff freely accepted both physical and legal risk of injury (gave up right to sue)
- "Volenti" is a complete defence: If the defendant can prove that the plaintiff freely accepted both the physical and legal risk of harm, then there is no liability.
- Because of the harsh result (i.e., the plaintiff recovers nothing), the courts have adopted a narrow approach

Establishing Voluntary Assumption of Risk: "Volenti"

- The Plaintiff must clearly accept:
  - The physical risk ("I accept that I might be harmed") and
  - The legal risk ("I agree that I won't sue you as a result").
- To be valid, the defendant must have drawn the plaintiff's attention to the exclusion clause or waiver.



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1. After two years of discussions and committee work the city of Toronto has finally created a plan to develop transit until the year 2020. The plan calls for the expansion of existing subway lines into Mississauga, Brampton, Richmond Hill and Markham. Torontohas determined that in order to finance the plan it will require $10 billion. Provincial legislation allows Toronto to set property taxes for Toronto residents, and collect road tolls from all vehicles at the municipal limits of Toronto. However, road tolls are extremely unpopular so Toronto's mayor, Bob Chrysler, has declared he will finance the subway plan by increasing property taxes for residents of Mississauga, Brampton, Richmond Hill and Markham since they will be the main users of the new subway expansions.

a. Can the Mayor increase the property taxes as he is planning? Circle: Yes / No(1 point)

b. Identify the legal issue at the centre of this case: (1 point)

- Whether the Mayor's tax increase is constitutional according to sections 91 and 92 of the Constitution

c. Explain your answer by applying the law to the facts of this case: (2 points)

- The city of Toronto is a municipality. It gets its powers from the province. The provincial legislation allows Toronto to tax within its municipal limits. Brampton and the other municipalities are not part of Toronto. Therefore, taxing their residents is outside Toronto's legislative powers. The Mayor's proposal is ultra vires.

d. Is the Mayor's decision ethical? Explain. (1 point)

- Not a legal analysis! Focus is on consequences of decision, as well as fairness of decision. This question is not about a person's human rights or character.Consequences – the decision will result in better transit – everyone will gain-
- The decision will also result in more taxes for non-Torontonians – everyone outside of Toronto will lose, residents of Toronto will gain.Fairness – everyone uses the system so everybody should pay.

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2. Toronto has to come up with solutions for transit congestion until its expansion plan is complete, since more and more people are expected to use its transit system. According to customer polls, subway riders are particularly irate when overweight people sit down, since it is not comfortable for regular riders to sit down next to them, and in the end the obese riders effectively occupy two seats. In response to these polls, and in order to address transit congestion, the City of Toronto has passed a bylaw according to which overweight people are not allowed to sit down during rush hour.

a. Can the city of Toronto regulate overweight people in this manner? Circle: Yes / No

b. Identify the legal issue at the centre of this case: (1 point)

- Whether the city of Toronto has violated the Charter of Rights and Freedoms by passing this bylaw.

c. Explain your answer by applying the law to the facts of this case: (2 points)

- The bylaw appears to discriminate against obese people. Is this different treatment unconstitutional? The section of the Charter that deals with discrimination is Section 15. It lists prohibited grounds. Obesity is not listed in section 15. Therefore different treatment of people according to their obesity is allowed according to section 15. The bylaw is constitutional. (Note: Do not equate obesity with disability, since there are no facts about that in the question)

d. Is such a law ethical? Explain (1 point)

- Consequences – obese people will lose. Non-obese people will gain.
- Fairness – the decision is not fair to obese people. However obese people take upmore of the average space and that may not be fair to regular people.
- Human Rights – the decision harms the dignity of obese people
- Character – it seems mean-spirited to target obese people in such a manner

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3. After a transit conference in which Toronto officials explained their overweight ban other cities across Canada have decided to follow up with similar legislation. Bylaws have now been passed in Vancouver, Calgary and Halifax. The bylaws are very similar, prohibiting overweight people from sitting down in public transit during rush hour. In response overweight people have formed an advocacy group called the Fabulous Overweight Fairness Fighters, or F-OFF for short. Rob Chrysler, Toronto's overweight Mayor, is the leader of the group and has personally sued the City of Toronto. F-OFF has launched lawsuits as a

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group against the bylaws in Vancouver, Calgary and Halifax as well.Assume for the purpose of this question that Mayor Chrysler wins in court against the City of Toronto.

a. Will F-OFF succeed in its lawsuits? Circle: Yes / No (1 point)

b. Explain your answer above. Provide at least two reasons for your answer in your explanation. (4 points, 2 points per reason)

- First Reason: The Toronto decision is not a binding legal precedent on the other courts since they are in other provinces and other jurisdictions.
- Second Reason: F-OFF is not a legal person, it is a group, and therefore it cannot be litigate in court.

---

4. The Mayor of Toronto, Bob Chrysler, is also a City of Toronto employee. Bob has a well-documented drinking problem, and is known to take long lunch breaks during whichhe drinks several cans of beer. One day at work, after drinking heavily during lunch, Bobwent to a meeting about transit and got into a fight with Eve, a transit advocate. Bob ended up throwing a glass of water in Eve's face. Eve has decided to sue the City of Toronto for Bob's actions. The city has a very clear policy that does not allow drinking of alcoholic beverages at all during work.

a. Will the court hear Eve's lawsuit? Circle: Yes / No (1 point)

b. Identify the legal issue at the centre of this case (1 point)

- Whether the city of Toronto is vicariously liable for the actions of the Mayor.

c. Explain your answer by applying the law to the facts of this case (2 points)

- A vicarious liability analysis. Is the Mayor an employee of the city? Yes. Therefore city could be liable. Next – did the city authorize and instruct the Mayor to act in that way? No. Next – are the Mayor's actions closely connected to his job? Yes – the incident happened at a transit meeting, with water provided for the meeting, and a heated discussion over transit is very likely.
- Please note – the facts about the Mayor's drinking and the policy against alcohol indicate that his actions were not approved by the city, but the city is still liable since they were closely connected to his job as a mayor.

d. Regardless of your answers above, do you think the City should be responsible for Bob's actions in this case? Explain (1 point).

- Consequences – if the city is not responsible Eve loses. The city is a large organization so the corresponding gain is not large.
- Fairness – it may not be fair to hold the city responsible for excessive drinking in violation of a clear policy. It is also not fair to Eve that she has to deal with an out-of-control mayor that should follow city policies.
- Human rights – Eve's dignity has been harmed.
- Character – reducing drunk behavior is a societal goal.

---

5. Consider the facts of the previous question, in which Bob threw a glass of water in Eve's face. That action came after a heated discussion and argument between the two of them, in which both Bob and Eve were shouting loudly at each other. Eve shouted at Bob: "You are a drunk and a fool!" and Bob shouted back: "Oh Yeah? I'll show you who's a drunk!" Bob then lunged at Eve and threw a glass of water in her face.

a. Has Bob committed the tort of assault? Circle: Yes / No (1 point)

b. Explain your answer (1.5 points)

- Apply the elements of assault. Did Bob intend to yell at Eve? Yes. Would a reasonable person believe bodily harm would occur? (Was there a threat?) Yes. The statement that Bob yelled is clearly threatening. Therefore Bob is liable for assault

c. Has Bob committed the tort of battery? Circle: Yes / No (1 point)

d. Explain your answer (1.5 points)

- Apply the elements of battery. Did Bob intend to lunge and throw the water at Eve? Yes. Was the action offensive and harmful to a reasonable person? Yes. Therefore Bob is liable for battery

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